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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,142	11/26/2001	Meijie Zhang	P24,841-A USA	9602
7590 09/23/2004 Synnestvedt & Lechner LLP 2600 Aramark Tower 1101 Market Street Philadelphia, PA 19107-2950			EXAMINER DOVE, TRACY MAE	
			ART UNIT 1745	PAPER NUMBER

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/994,142	Applicant(s) ZHANG, MEIJIE	
	Examiner Tracy Dove	Art Unit 1745	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See attached sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-5, 7-13 and 27-38.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Attachment to Advisory Action (20.09.04):

The amendment filed 8/16/04 has not been entered because the incorporation of claim 2 into claim 1 and the incorporation of claim 28 into claim 27 would require further consideration and/or search. The amendment creates a scope of enablement issue under 35 U.S.C. 112, 1st. Specifically, claims 4 and 30 recite the lithium borate and lithium insertion compound are dry mixed. The specification supports a heating temperature in the range of 250°C to 450°C only for an aqueous treatment (see Example III of the present specification). Note Example IV discloses that dry mixing and heating a lithium insertion compound and a lithium borate at 600°C improves capacity fade rate.

The 35 U.S.C. 112, 2nd, rejection of claim 5 has been overcome by the non-entered amendment filed on 8/16/04.

Applicant argues in view of the unexpected results shown in Figure 5 of the present application, the present claims are not obvious in view of Uehara et al. However, the results shown in Figure 5 are not commensurate in scope with the claimed invention. Specifically, the results shown are for an aqueous treatment. An aqueous treatment is not required by claim 1 or claim 27. Furthermore, the results shown in Figure 5 are obtained for a specific amount (0.15%) of lithium borate. Claims 1 and 27 do not contain any limitations regarding the amount of lithium borate contained in the cathode powder. Furthermore, unexpected results must distinguish the claimed invention over the prior art. Specifically, Applicant must show the *battery* of the claimed invention has improved capacity fade rate over the *battery* of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tracy Dove
Patent Examiner
Technology Center 1700
Art Unit 1745

September 20, 2004